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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

19)	Case No. C 08-01756 BZ
20	CHARLES DAVIDSON and CD & PWS)	
21	ENTERPRISES, INC.,	)	<u>JOINT CASE MANAGEMENT</u>
22		)	<u>STATEMENT AND RULE 26(f)</u>
23	Plaintiffs,	)	<u>REPORT OF PLAINTIFFS CHARLES</u>
24		)	<u>DAVIDSON AND CD & PWS</u>
25	vs.	)	<u>ENTERPRISES, INC., AND</u>
26		)	<u>DEFENDANT CONOCOPHILLIPS</u>
27	CONOCOPHILLIPS COMPANY and	)	<u>COMPANY</u>
28	DOES 1 through 100,)	
)	
	Defendants.	)	Date: July 14, 2008
		)	Time: 4:00 p.m.
		)	Courtroom: G
		)	Before: Hon. Bernard Zimmerman

Pursuant to Federal Rule of Civil Procedure 26(f), Local Rule 16-9 and the Court's April 2, 2008 Order, Plaintiffs Charles Davidson ("Davidson") and CD & PWS Enterprises, Inc. ("CD") and Defendant ConocoPhillips Company ("ConocoPhillips") submit this Joint Case Management Statement and Rule 26(f) Report.

1. Jurisdiction and Service. The Court has federal diversity jurisdiction over this matter, as it is a civil action between citizens of different states and the amount allegedly in controversy exceeds \$75,000. ConocoPhillips does not dispute personal jurisdiction or that this Court is the proper venue for this action. No parties remain to be served.

2. Facts. From 2001 to 2007, CD operated a Union 76 petroleum service station in San Ramon, California ("the Station") as a ConocoPhillips franchisee, pursuant to a succession of three-year written agreements (collectively, the "Franchise Agreements").¹ Davidson executed the final of the three Franchise Agreements on November 6, 2006. ConocoPhillips contends that the Franchise Agreements were all fully integrated, and included provisions permitting modification only by writing signed by both parties. Plaintiffs disagree.

Plaintiffs allege that in 2002 and 2003 ConocoPhillips made various representations to CD and Davidson regarding a program by which CD could construct a car wash at the Station in return for monthly rent rebates by ConocoPhillips. Plaintiffs also allege that ConocoPhillips concealed information about the rent rebate program sometime between 2003 and 2006. Plaintiffs contend that these affirmative representations and omissions gave rise to an oral contract, and further constitute intentional and negligent misrepresentations and unfair business practices (pursuant to California Business and Professions Code section 17200) by ConocoPhillips.

ConocoPhillips contends that it never advised either Plaintiff that it would reimburse such costs, much less incurred any legal obligation to do so. Rather, ConocoPhillips contends that although it may have sent Plaintiffs generalized information regarding dealer improvement programs under which reimbursement might be available, it explicitly advised Plaintiffs that it would not provide reimbursement for the alleged car wash modifications.

¹ ConocoPhillips owns the Station (i.e., the real property and improvements), as well as the Union 76 trademarks and associated intellectual property. Davidson is the president and an owner of CD.

1 3. Legal Issues. As addressed more fully in ConocoPhillips' motion to dismiss,
2 ConocoPhillips contends that Plaintiffs' claims are precluded on various legal grounds including
3 the statute of frauds and parol evidence rule. ConocoPhillips further contends that the various
4 alleged representations and communications alleged by Plaintiffs are insufficient to establish the
5 formation of a contractual agreement, and likewise do not support claims for fraud or unfair
6 business practices.

7 4. Motions. ConocoPhillips moved to dismiss the Complaint pursuant to Rule
8 12(b)(6) on the ground that the Complaint fails to state a claim upon which relief can be granted.
9 The Court denied ConocoPhillips' motion. ConocoPhillips intends to move for summary
10 judgment.

11 5. Amendment of Pleadings. Plaintiffs do not currently anticipate amending their
12 Complaint or adding new parties. ConocoPhillips will answer the Complaint and assert all
13 appropriate affirmative defenses, and may assert any appropriate counterclaims.

14 6. Evidence Preservation. The parties do not currently anticipate any issues
15 regarding the preservation of evidence. The parties will work together to establish protocols, if
16 necessary, for the production of electronic files or voluminous records.

17 7. Disclosures. The parties agree to make Initial Disclosures pursuant to Rule 26 no
18 later than August 1, 2008.

19 8. Discovery. The parties have not yet commenced any discovery. ConocoPhillips
20 currently plans to take the depositions of Davidson and any relevant owners, employees or other
21 representatives of CD, as well as any other relevant individuals of which it may learn during the
22 course of discovery. ConocoPhillips intends to complete the deposition of Davidson within 75
23 days of the Case Management Conference.

24 Plaintiffs intend to take the depositions of ConocoPhillips, its representatives, and other
25 individuals Plaintiffs of which Plaintiffs learn during discovery and investigation.

26 The parties intend to conduct written discovery via interrogatories, requests for
27 admissions and requests for production of documents. The parties agree, and request that the
28 Court order, that each Plaintiff may propound 25 interrogatories on ConocoPhillips, and that

1 ConocoPhillips may propound 25 written interrogatories on each Plaintiff. The parties do not
2 request at this time that the Court impose any limitation with respect to the number of requests
3 for admissions or requests for document production that may be served.

4 The parties do not propose that discovery should be conducted in phases or limited to
5 particular issues.

6 9. Class Actions. Not applicable; this case is not a class action.

7 10. Related Cases. No related cases or proceedings are pending before another judge
8 of this court, or before another court or administrative body.

9 11. Relief. Plaintiffs seek general and special damages of \$3,500,000 and punitive
10 damages of \$3,000,000. If Plaintiffs prevail on any of their claims, they will request an award of
11 attorneys' fees and costs, including a contingent risk multiplier.

12 ConocoPhillips contends that even if liability could be established, certain categories of
13 damages sought by Plaintiffs would not be recoverable because they were not foreseeable at the
14 time of the alleged promises and/or were not caused by any act or omission of ConocoPhillips.
15 ConocoPhillips also disputes the manner in which Plaintiffs' damages are calculated. Such
16 issues will likely be the subject of expert analysis and discovery.

17 ConocoPhillips contends that it would be entitled to an award of attorneys' fees and costs
18 should it prevail on any of Plaintiffs' claims.

19 12. Settlement and ADR. The parties have stipulated to mediate. The Court has
20 ordered the parties to complete mediation no later than October 24, 2008. The parties are
21 amenable to attending a settlement conference conducted by a Magistrate Judge.

22 13. Consent to Magistrate Judge For All Purposes. The parties have consented to the
23 jurisdiction of United States Magistrate Judge Bernard Zimmerman for all further proceedings
24 including trial and entry of judgment.

25 14. Other References. The parties do not believe the case is suitable for reference to
26 binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

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1 15. Narrowing of Issues. The parties will work together in an effort to narrow the
2 issues by entering appropriate stipulations or otherwise. The parties believe, however, that it
3 will be necessary first to complete some discovery.

4 16. Expedited Schedule. The parties do not believe this is the type of case that can be
5 handled on an expedited basis with streamlined procedures.

6 17. Scheduling. The parties propose the following case deadlines:

7 Expert Designation: March 16, 2009

8 Discovery Cutoff: May 25, 2009

9 Hearing of Dispositive Motions: June 29, 2009

10 Pretrial Conference: July 20, 2009

11 Trial: August 17, 2009

12 18. Trial. The parties currently anticipate a 7-9 day trial, although discovery has not
13 yet commenced. Plaintiffs have demanded a trial by jury.

14 19. Disclosure of Non-party Interested Entities or Persons. The parties have not filed
15 the "Certification of Interested Entities or Persons" required by Civil Local Rule 3-16, but will
16 do so no later than July 25, 2008. Pursuant to Civil Local Rule 3-16, Plaintiffs certify that as of
17 this date, other than the named parties, there is no such interest to report.

18 Dated: July 7, 2008

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21 By: /s/
Attorney for Plaintiffs Charles Davidson and
22 CD & PWS Enterprises, Inc.

23 Dated: July 7, 2008

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